

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MILTON SMITH #A81091,)	
)	
Plaintiff,)	
)	
v.)	No. 11 C 6912
)	
DIRECTOR S. A. GODINEZ,)	
)	
Defendant.)	

MEMORANDUM ORDER

Here is the self-explanatory opening paragraph in this Court's January 3, 2010 memorandum order ("Order") that set out the early background that has led up to the current posture of this case:

This Court's October 5, 2011 memorandum opinion and order ("Opinion") explained in detail the reasons for its dismissal of the pro se 28 U.S.C. §2254 ("Section 2254") Petition for Writ of Habeas Corpus ("Petition") by which Milton Smith ("Smith") challenged his 1983 conviction on two murder charges on which he is currently serving a 60-year custodial sentence. After Smith filed a November 7 Notice of Appeal together with his Request for Certificate of Appealability ("COA"), this Court issued a brief November 9 statement ("Statement") that (1) held no COA should issue as to Smith's appeal and (2) advised Smith of his right to tender that same issue to our Court of Appeals for its consideration.

As the Order had then requested, Smith has now submitted a motion and affidavit in support of his request to proceed in forma pauperis on appeal, coupled with a printout of transactions in his trust fund account at Tamms Correctional Center, where he is serving his sentence.

But the possibility of in forma pauperis treatment is

dependent not only on a litigant's showing of financial inability to pay a filing fee--in this instance \$455 in appellate filing fees--but also on the advancement of a nonfrivolous argument (in the legal sense). And the latter threshold hurdle is one at which Smith falls, for the same reasons that led to this Court's denial of Smith's request for a COA also buttress a corresponding determination as to his substantive claim.

Accordingly this Court denies Smith's request for in forma pauperis treatment on appeal. Smith is advised, however, that he may address the same question directly to the Court of Appeals.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style.

Milton I. Shadur
Senior United States District Judge

Date: February 1, 2012